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*Submitted via FOIA Online (<https://foiaonline.regulations.gov>)*

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

**Re: Request Under Freedom of Information Act (Fee Waiver/Limitation Requested)**

Dear Freedom of Information Officer:

Feather River Air Quality Management District ("FRAQMD") and Lake County Air Quality Management District ("LCAQMD"), via their public interest counsel at Aqua Terra Aeris Law Group, request all documents related to the following:

- (1) All documents, including applications, workplans and reports related to grants from the United States Environmental Protection Agency to the California Air Resources Board, pursuant to 42 U.S.C. Section 7405 (also known as Section 105).
- (2) All documents related to applications from the California Air Resources Board to the United States Environmental Protection Agency, pursuant to 42 U.S.C. Section 7405.
- (3) All documents identifying, discussing or referring to any terms or conditions imposed on grant funds received by the California Air Resources Board, pursuant to 42 U.S.C. Section 7405.

We trust that the government will reach a determination on this request within FOIA's 20 working day deadline and will limit any possible withholding to those documents that the government can meet its burden to show are truly exempt from disclosure and the release of which would cause foreseeable harm.



For purposes of this request “documents” means “all written, typewritten, drawn or printed material or record of any type or description and all information kept or recorded on magnetic or electronic media, including, without limitation, correspondence, letters, agreements, contracts, memoranda of agreement or understanding, electronic mail (including both messages sent and received from government personnel), telegrams, inter- and intra-office communications, forms, reports, studies, working papers, handwritten or other notes, phone records, logs, diaries, minutes, spreadsheets, computation sheets, data sheets, transcripts, drawings, sketches, plans, leases, invoices, index cards, checks, check registers, maps, charts, graphs, bulletins, circulars, pamphlets, notices, summaries, books, photographs, sound recordings, videotapes, rules, photocopied or computer-related materials, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them, and all forms of written or recorded matter to which [the government has] access or of which [the government has] any knowledge”). “Related to” means “comprising, constituting, containing, evidencing, setting forth, summarizing, alluding to, responding to, commenting upon, discussing, supporting, refuting, showing, disclosing, explaining, mentioning, analyzing, recording, reflecting upon, or characterizing, either directly or indirectly, in whole or in part.

FOIA requires that an agency disclose documents to any person except where the document falls under a specifically enumerated exemption. 5 U.S.C. § 552 (2002). “[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act”; “[c]onsistent with the Act’s goal of broad disclosure, these exemptions have been consistently given a narrow compass.” *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 7-8 (U.S. 2001) (internal citations omitted). The courts have emphasized the narrow scope of these exemptions and “the strong policy of the FOIA that the public is entitled to know what its government is doing and why.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980). Further, under the recent amendments, 5 U.S.C § 552(a)(8)(A) now provides that (1) an agency shall withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) or disclosure is prohibited by law; (2) the agency shall consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (3) the agency shall take reasonable steps necessary to segregate and release nonexempt information.

Thus, the government has a duty in preparing responses to FRQAMD’s FOIA request not



to withhold documents unless foreseeable harm exists, to consider partial disclosure, and to take reasonable steps to segregate nonexempt information. Exemptions are read narrowly and the government bears the burden of proving exemptions apply. 5 U.S.C. § 552(a)(4)(b); *see Milner v. Dep't of the Navy*, 562 U.S. 562, 563 (U.S. 2011). Agencies “should not withhold information simply because [they] may do so legally. . . For every request, for every record reviewed, agencies should be asking ‘Can this be released?’ rather than asking ‘How can this be withheld?’”<sup>1</sup> *See also Mobil Oil Corp. v. U.S. E.P.A.*, 879 F.2d 698, 700 (9<sup>th</sup> Cir. 1989) (“The exemptions are permissive, and an agency may voluntarily release information that it would be permitted to withhold under the FOIA exemptions.”)

We request that the government provide electronic copies of its response to this request – as well as any responsive documents that may be transmitted via e-mail – to myself and Matthew Maclear at the following e-mail addresses:

Amanda Prasuhn: [ap@atalawgroup.com](mailto:ap@atalawgroup.com)  
Matthew Maclear: [mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)

Please send any documents that must be sent via regular mail to the following address:

Amanda Prasuhn  
490 43rd Street  
Oakland, CA 94609

Your staff may contact me at (314) 809-3600 or [ap@atalawgroup.com](mailto:ap@atalawgroup.com) to further discuss your response to this request. We are committed to working with you to streamline these requests and to avoid any unnecessary consumption of staff time or expense. Thank you for your prompt attention to this matter.

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<sup>1</sup> U.S. Department of Justice – Office of Information Policy, *Creating a New Era of Open Government*; see also Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (74 Fed. Reg. 4683); Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act [74 Fed. Reg. 51879 (Oct. 8, 2009)]



Sincerely,

A handwritten signature in blue ink, appearing to read "AP", with a long, sweeping horizontal line extending to the right.

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Amanda Prasuhn  
Aqua Terra Aeris Law Group

Encl.: *Attachment 1 (Fee Waiver Request)*



## Attachment 1 Fee Waiver Request



## **Attachment to Freedom of Information Act (FOIA) Request Letter: Fee Waiver Request**

Pursuant to 40 C.F.R. section 2.120(d), the U.S. Environmental Protection Agency (EPA) applies a six factor test in determining whether to grant a fee waiver for FOIA requests. Feather River Air Quality Management District ("FRAQMD") and Lake County Air Quality Management District ("LCAQMD") address each of these six factors below. As demonstrated below, FRAQMD and LCAQMD should be granted a fee waiver.

*1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.*

FRAQMD and LCAQMD's Response: FRAQMD and LCAQMD's FOIA request seeks documents relating to the Environmental Protection Agency's consideration of grant applications submitted to it by the California Air Resources Board, an air pollution control agency within the meaning of Sections 7602(b)(2) and 7602 (b)(4). Accordingly, FRAQMD and LCAQMD's requests satisfy this criterion.

*2. For the disclosure to be likely to contribute to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.*

FRAQMD and LCAQMD's Response: The documents FRAQMD and LCAQMD request constitute the best available evidence of the Environmental Protection Agency's consideration of grants made to the California Air Resources Board.

*3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.*

FRAQMD and LCAQMD's Response: Disclosure of the documents will promote the understanding of the general public in a significant way because FRAQMD and LCAQMD will analyze the information and make their conclusions known to publicly-elected board members, other air districts in the State of California, and the public at large via press releases and by posting our analyses of the information on one or more internet websites or email broadcast



“systems”, such as the California Air Pollution Control Officers Association.

There has been significant air district, environmental group and media focus on the EPA grant processes at issue in this request. The documents requested will allow FRAQMD and LCAQMD to provide meaningful information to the air pollution regulatory community and the media on these topics.

*4. The disclosure must contribute “significantly” to public understanding of government operations or activities.*

FRAQMD and LCAQMD’s Response: Disclosure of the requested information will significantly contribute to public understanding of government operations, specifically, the EPA’s evaluation and grant making authority regarding the costs of implementing programs for the prevention and control of air pollution and/or the implementation of national primary and secondary ambient air quality standards, and how the United States Environmental Protection Agency has evaluated costs associated with implementing, planning, developing, establishing, carrying out, improving and/or maintaining programs associated with the prevention and control of air pollution.

Threats to our environment such as air pollution adversely affect millions of people throughout the United States, and adequate, efficient implementation of programs is critical for the public health of millions. FRAQMD and LCAQMD have a demonstrated ability to disseminate the problematic features of government activities to a wider public audience, by litigation as well as the other means. Factors indicating an ability to disseminate information to the public include publication on an organization’s website and the ability to obtain media coverage. *Judicial Watch v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003).

FRAQMD and LCAQMD’s analyses will be disseminated via press releases as well as posted on FRAQMD’s website (<http://www.fraqmd.org>), LCAQMD’s website (<http://www.lcaqmd.net/>), and likely the web sites of other local air pollution control districts. FRAQMD and LCAQMD have demonstrated their ability to disseminate information to the public, as evidenced by its upkeep of its website and social media, its mention on other environmental groups’ websites, and its ability to attract press coverage for its various regulatory actions.

*5. The extent to which disclosure will serve the requester’s commercial interest, if any.*



FRAQMD and LCAQMD's Response: FRAQMD and LCAQMD are two of thirty-five air pollution/quality control/management districts in California. FRAQMD and LCAQMD are committed to the protection, preservation, and restoration of air quality in Sutter and Yuba Counties, its territorial jurisdiction. Furthermore, FRAQMD and LCAQMD are members of the California Air Pollution Control Officers Association and actively participate in discussions with other rural air districts in California. Both FRAQMD and LCAQMD are also local government special districts. Accordingly, FRAQMD and LCAQMD have no commercial interest in the information requested. FRAQMD and LCAQMD seek the information solely to determine the status of applications made to and grants issued from the United States Environmental Protection Agency concerning the implementation of programs for the prevention and control of air pollution. This information will aid in FRAQMD and LCAQMD's efforts to advocate that the appropriate state, federal, or private entities take needed actions to protect our environment and air resources.

FRAQMD and LCAQMD have no financial interest in the information sought or any enforcement actions that may result.

*6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.*

FRAQMD and LCAQMD's Response: FRAQMD and LCAQMD have no commercial interest in the requested information, as discussed above. Accordingly, the identified public interest in the disclosure of the requested information discussed above necessarily outweighs any commercial interest in this request.

For the above reasons, FRAQMD and LCAQMD respectfully requests a fee waiver pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 15 C.F.R. section 4.11(k) for all copying costs, mailing costs, and other costs related to locating and tendering the documents.

We also base our request for a fee waiver on the following additional authorities.

The law **requires** that records be furnished without charge or at a reduced charge when requesters are able to demonstrate that (1) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) is not primarily in the commercial interest of the requester.





5 U.S.C. 552(4)(a)(iii); 40 C.F.R. 2.107(l)(1); *Judicial Watch, Inc. v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003) [emphasis added].

**(a) Rule of liberal construction.** FOIA’s fee waiver provision is to be liberally construed in favor of noncommercial requesters. *Judicial Watch, Inc. v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003); *McClellen Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9<sup>th</sup> Cir. 1987). The major purpose of the 1986 amendments was to remove roadblocks and technicalities that agencies have used to deny fee waivers. *McClellen*, 835 F.2d at 1284. A request for fee waiver need only be reasonably specific and nonconclusory. *Judicial Watch, Inc. v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003).

Requesters make a prima facie case for a fee waiver when they specify why they want the administrative record, what they intend to do with the information, and to whom they will distribute the information. *Friends of the Coast Fork v. U.S. Dept. of Interior*, 110 F.3d 53, 55 (9<sup>th</sup> Cir. 1997). The burden then shifts to the agency to establish that the denial is warranted. *Id.* In denying a fee waiver request, the agency may not “hang [its] hat on a single factor” but must assess all of the pertinent factors. *Id.* Moreover, a reviewing court owes no particular deference to an agency’s restrictive interpretation of FOIA. *See Tax Analysts v. Commissioner*, 117 F.3d 607, 613 (D.C. Cir. 1997).

**(b) Public interest purpose.** FRAQMD and LCAQMD fall squarely within the category of “public interest” requesters intended to benefit from the 1986 amendments of FOIA, which expanded FOIA fee waiver provisions. This amendment was intended precisely to facilitate informational access by groups that will monitor and challenge government activities. *See Better Govt. Ass’n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986). Indeed, this provision should be construed as a presumption that such requesters are entitled to a fee waiver, especially if the requesters will publish the information or otherwise make it available to the general public. *See Ettlinger v. Fed. Bureau of Investigation*, 596 F.Supp. 867, 873 (D. Mass. 1984).

The legislative history of the fee waiver provision indicates that “A requester is likely to contribute significantly to public understanding if the information is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.” 132 Cong. Rec. H94646 (Reps. English and Kindness). Courts have cited this legislative intent as a standard for determining that a requester qualifies for a fee waiver. *See McClellen*, 835 F.2d at 1284-86.



For the above reasons, FRAQMD and LCAQMD respectfully requests pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 40 C.F.R. section 2.120(d) a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents.